However, in *Mayne & Mcgregor* on Damages (12th Edition) at paragraph 633, it is submitted that the best rule would give the highest intermediate value between knowledge and judgment. Support for this is said to be derived from *Sachs* v. *Miklos* [3] (a tort case) where it was held that the plaintiff should be entitled to the highest value to which the market had climbed before the action because he might have wished to sell the goods at the market peak.

In view of the inconclusive nature of the authorities, one is almost left at large on how the loss to the buyer is to be assessed on the particular facts before me.

To give him nothing at all would be absurd, on the facts, and to award him the highest intermediate value before action brought, or the accruing dividends, would also be somewhat absurd because having never literally paid for these shares there was nothing to prevent him from buying them elsewhere especially as the price was going down. As against that it must be remembered that he was a client of long standing who had a right to expect some measure of loyalty and service from Alex Goei's firm with which he had an account. That account was in credit. The firm's own ledger account (Ex. D2) shows that it debited his account with the contract price of these shares thereby inviting the conclusion that, so far as the firm was concerned, these shares had been transferred.

In all the circumstances I am of the view that, in fairness to both parties, damages for the breach should be assessed at a figure roughly about half-way between the contract price and the highest peak before the action, *i.e.*, at, say, 60 cents per share.

I very much regret having taken longer than I usually do in reaching a decision. I had hopes of an amicable solution but that was not to be. For this, the dearth of clear-cut authority on the subject is undoubtedly a major contributing factor.

Damages in respect of 2,000 shares therefore works out, on that basis, at $1,200 to the plaintiff and judgment will be entered accordingly.

Order accordingly.

Solicitors: *Hilborne & Co.; A. S. K. Wee.*

RE KWONG LEE CO. LTD.

[O.C.J. (Chang Min Tat J.) April 18, 1968]
[Ipoh — Companies Winding-up No. 1 of 1962]

Companies — Company in voluntary liquidation — Assets not sold five years after decision to liquidate — Whether profits or gains from assets subject to development tax — Companies Ordinance, 1940.

Income Tax — Development tax — Income Tax Ordinance, 1947, ss. 9, 10 and 38A.

This was an application by the liquidator of the Kwong Lee Co. Ltd. (in voluntary liquidation since July 1962) for directions whether the liquidator should pay the sum of $500 to the Comptroller of Income Tax on account of development tax payable for the year of assessment 1967 in respect of a house (one of the assets of the company) which had not been sold in order that time might run against the chargee of the land and house.

Held: so long as the liquidator was trading within the meaning of the Companies Ordinance, the gain or profits from the trade or business would be taxable under section 10 of the Income Tax Ordinance. The development tax was therefore payable on the property belonging to the company even though it was in voluntary liquidation.

Cases referred to:—

(1) *In Re International Marine Hydropathic Co.* (1885), 28 Ch. D. 470, C.A.

(2) *In re Wearmouth Crown Glass Co.* (1882), 19 Ch. D. 640.

(3) *In re National Arms and Ammunition Co.* (1885), 28 Ch. D. 474, C.A.

(4) *In re Blazer Fire Lighter Ltd.* [1895] 1 Ch. 402.

(5) *In re Oak Pits Colliery Co.* (1882), 21 Ch. D. 322.

SUMMONS-IN-CHAMBERS.

N. Sharma for the applicant.

Abdul Hamid bin Hassan (Examiner, Inland Revenue Department, Ipoh) for the respondent.

Cur. Adv. Vult.

Chang Min Tat J.: This is an application by the liquidator of Kwong Lee Co. Ltd. (in voluntary liquidation) made by way of summons-in-chambers for directions whether the applicant should pay the sum of $500 to the Comptroller of Income Tax on account of development tax.

In order to understand how this question arose, it may be necessary to trace the history of the liquidation in this case. On the 17th July, 1962, the company resolved at an extra-ordinary general meeting to wind-up voluntarily. On the same day, a meeting of the creditors of the company was held and it accepted the appointment of the liquidator appointed by the company as liquidator of the company. A question then arose whether the liquidation of the company should continue to be in voluntary liquidation or under the supervision of the court, and this question was decided on the 10th October, 1962, when the court ordered that the voluntary liquidation of Kwong Lee Co. Ltd. be continued but

subject to the supervision of the court. Among the assets of the company is a house bearing assessment number 62, Main Road, Lahat, in respect of which a monthly rental of $37.50 was payable by the tenant. A sum of $450 was, in fact, received for the year ending 31st December, 1966.

I am given to understand by counsel for the liquidator that this property was retained and not sold, in order that time might run against the chargee and that, in fact, time had so run. The retention of the property was thus, in the circumstances, beneficial to the creditors.

On the 8th December, 1967, the Senior Assistant Comptroller of Income Tax made demand on the liquidator for the payment of development tax for the year of assessment 1967. Now development tax became payable for the year of assessment 1967 by section 33A of the Income Tax Ordinance, No. 48 of 1947, as enacted by section 3 of Schedule I of the Finance Act, 1967, which was brought into force on the 1st January, 1967.

Section 33A reads as follows:—

"33A. (1) Subject to the provisions of the Fifth Schedule, a tax to be known as development tax shall be assessed for the year of assessment 1967 and subsequent years of assessment, upon every person having development income, ascertained under that Schedule, for any such year, or having a development source at any time in that year, in an amount ascertained in accordance with that Schedule, and the development tax so assessed shall be payable for that year, and save as otherwise provided in that Schedule the provisions of this Ordinance relating to a company or to any other person, as the case may be, shall apply, with any necessary modifications, for all purposes to development tax as they do to income tax and, subject to any such modifications, development tax shall be deemed for all the purposes of this Ordinance to be income tax."

and it is by reason of this addition to the taxation of this country that the comptroller made his demand.

In consequence of this demand and since he is not sure whether the company which is in voluntary liquidation is liable to pay the development tax, the liquidator applies to court for a ruling.

It is not denied that the company is in receipt of rents from property situated locally, and it is urged on behalf of the Comptroller of Income Tax that the company must, therefore, come within the definition contained in the new section of a person having a development source which, subject to any modifications made necessary by the provisions of the Ordinance relating to a company, is to be deemed to be income tax.

On behalf of the liquidator, it is argued that his duty is to pay any class of creditors in full (section 186(1)(d) of the Companies Ordinance, No. 49 of 1940), such creditors being, by section 176, creditors at the time of the petition and that consequently he would not be right to entertain any debt incurred after the date of the winding-up since such a claim could not be said to be due to a creditor at the time of the winding-up. It is further argued that, in the absence of any provisions in the Companies Ordinance, 1940, for the payment of income tax by a company in liquidation, the Comptroller of Income Tax has no statutory claim against him.

With respect, I am unable, after consideration, to accept the argument submitted on behalf of the liquidator. In my view, the fallacy of this argument becomes apparent from a consideration of the exercise by the liquidator of his power to carry on the business of the company, in a winding-up by the court, with the sanction either of the court or of the committee of inspection, under section 186(1)(c), or in a voluntary winding-up without sanction, under section 241(1)(b) of the Companies Ordinance, 1940. His power may be limited to so far as may be necessary for the beneficial winding-up of the company, but if he exercises the power, there can be no doubt, so long as he is trading within the meaning of the Ordinance, that the gain or profits from the trade or business would be caught, for purposes of payment of income tax, by section 10 of the Income Tax Ordinance No. 48 of 1947 which, though now repealed by the Income Tax Act, No. 47 of 1967, nevertheless applied to income for the year of assessment 1967 and earlier (*cf.* the definition of trade in section 526(1) of the English Income Tax Act, 1952, and the cases noted in pages 115-116 of volume 20 of *Halsbury's* Laws of England (3rd Edition), which clearly establish that where there is trading, a company in liquidation is nevertheless liable to tax).

The question in this case arose out of the continued possession of property. Now, rates are payable in respect of properties, and it has been decided in a number of cases (see *In re International Marine Hydropathic Co.*,[1] *In re Wearmouth Crown Glass Co.*,[2] *In re National Arms and Ammunition Co.*[3] and *In re Blazer Fire Lighter Ltd.*[4]), that where the liquidator is in beneficial possession of premises, he must pay in full the rates becoming due in respect of such premises after the winding-up commenced, or leave will be given to distrain for them. In the words of Fry L.J., in the first-mentioned case:—

"The rule has been laid down in the Court of Appeal in the case of *In re Oak Pits Colliery Company*,[5] and that rule I take to be this:— If the debt or liability is incurred by the liquidator or by the company after the winding-up, in the course of carrying on the business of the company, it must be paid in full. Such debts and liabilities are not debts and liabilities of the company in liquidation. They are debts and liabilities incurred subsequently to the liquidation, and it seems monstrous that the company should be allowed to carry on its business for its own purposes without paying the debts which have been incurred by so carrying it on."

For myself, I can see no valid distinction between rates and property or development tax

on premises. I am, therefore, of the opinion that the development tax is payable on the property belonging to the company, even it is in voluntary liquidation.

I am further of the view that this is a proper application to court, and I order that the costs of both parties be taxed and paid out of the assets of the company.

Order accordingly.

TEO CHWEE GEOK v. MAYNARD & CO. LTD. & ANOR.

[O.C.J. (Choor Singh J.) April 23, 1968]
[Singapore — Suit No. 2021 of 1964]

Landlord and Tenant — Sub-letting — Recovery of possession against sub-tenant — Possession recovered against tenant — Whether there was prohibition against sub-letting — Control of Rent Ordinance, (Cap. 242) s. 15(1)(l).

The plaintiff was the chief tenant of a rent controlled premises. On or about February 27, 1960, the plaintiff let the ground-floor of the premises to one Peter Chong, the chairman of the board of directors of the first defendant company. Negotiations between the plaintiff and Peter Chong for the tenancy of the premises were conducted through an intermediary, who was an employee of the first defendant company. Although rent receipts were issued in the name of Peter Chong, the premises were used as a dispensary of the first defendants. Peter Chong died in September 1960. Thereafter the plaintiff issued rent receipts in the name of the first defendants. In June 1963, the first defendants ceased to carry on the business of a dispensary, and in August 1963, they sublet the ground-floor to the second defendants without the plaintiff's consent. By a notice to quit, the plaintiff determined the tenancy of the first defendants. He commenced proceeding against the first and second defendants for the recovery of possession of the ground-floor of the premises. Judgment was given for the plaintiff for the recovery of possession against the first defendants under section 15(1)(l) of the Control of Rent Ordinance. But the judgment was declared to be unenforceable against the second defendants. The plaintiff appealed against that part of the judgment. The appeal was heard before the Federal Court which ordered a retrial of the action between the plaintiff and the second defendants. (See [1967] 1 M.L.J. 245).

At the retrial, the plaintiff contended that he was entitled to recover possession of the ground-floor of the premises from the second defendants as the first defendants had sublet the premises in breach of a prohibition against sub-letting in the sub-tenancy agreement. He sought to establish the existence of such prohibition in the sub-tenancy agreement on two grounds: (1) that when the premises was first let to Peter Chong there was a restriction against sub-letting and, that the first defendants were bound by such restriction as Peter Chong held the premises as agent for them (2) that he had been promised by the intermediary, as representative of Peter Chong, that on Peter Chong ceasing to run the dispensary, the premises would be returned to him.

Held, dismissing the claim: (1) there were two separate and distinct sub-tenancies of the ground-floor granted by the plaintiff, first to Peter Chong and after his death to the first defendants. In granting the tenancy to the first defendants, the plaintiff had placed no restriction on sub-letting;

(2) the plaintiff had failed to prove that the intermediary had promised that the premises would be returned to him on Peter Chong ceasing to run the dispensary. The first defendants were therefore not prohibited by the terms of their sub-tenancy from subletting to the second defendants. The plaintiff was consequently not entitled to an order for possession against the second defendants.

CIVIL SUIT.

K. E. Hilborne for the plaintiff.

J. F. McWilliam for the 2nd defendants.

Choor Singh J.: In this suit the plaintiff claims possession of the ground-floor of the premises known as No. 202 Orchard Road, Singapore.

The following facts are not in dispute. The plaintiff is the chief tenant of the premises which were at all material times subject to the Control of Rent Ordinance. On or about the 27th February 1960 the plaintiff let the ground-floor to one Peter Chong on a monthly tenancy at a rent of $120 per month. Peter Chong was the chairman of the board of directors of the first defendant company, namely, Maynard & Co., Ltd. and he had obtained the tenancy of the ground-floor of the premises for use as a dispensary by the first defendants. The negotiations between the plaintiff and Peter Chong for the tenancy of the ground-floor were conducted through an intermediary named Lee Swee Hin who was a chemist employed by Maynard & Co., Ltd. Peter Chong died in September 1960 and thereafter at the request of an official of Maynard & Co., Ltd. the plaintiff issued rent receipts in the name of Maynard & Co., Ltd. In June, 1963, Maynard & Co., Ltd. ceased to carry on the business of a dispensary on the ground-floor and in August 1963 they sublet the ground-floor to Ng Hui Lip & Company, the second defendants, without the plaintiff's consent. By a notice to quit dated the 7th October 1964 the plaintiff determined the tenancy of the first defendants as from the 30th November 1964. On the 3rd December 1964 the plaintiff commenced these proceedings against the first and second defendants for recovery of possession of the ground-floor of the premises. This action came on for trial before Mr. Justice Ambrose and he gave judgment on the 28th March 1966 for the plaintiff for recovery of possession of the ground-floor against the first defendants under paragraph (l) of section 15(1) of the Control of Rent Ordinance and declared that the judgment for possession shall not be enforceable against the second defendants. The plaintiff appealed against that part of the judgment which declared that the judgment for possession shall not be enforceable against the second defendants. The appeal came on for hearing before the Federal Court of Malaysia which ordered a retrial of the action between the plaintiff and the second defendants.